

Evaluation of Reasonable Assurance in Pennsylvania November 12 WIP Submissions

Agriculture:

PA has made major improvements to the agriculture section of the Watershed Implementation plan. There are many game-changing additions and details that provide improved reasonable assurance, particularly in the area of improved compliance with current regulatory programs. PA has adequately addressed many of the EPA comments on the September 1 draft submission. There are four areas that EPA would need to see addressed to fully meet EPA's expectations listed below. EPA staff has been in contact with DEP staff on all of these issues and is hopeful that the issues can be resolved for the final plan submission.

- Technology: EPA needs explanation (both for our technical staff and for narrative WIP) for # of technologies planned, schedule for implementation, and a documented basis of proposed nutrient reduction.
- P Imbalance: EPA needs a plan for how PA will comprehensively address P imbalances over time, including a schedule.
- Crediting Non-Cost Shared/Under-Reported Practices: EPA concurs with the approach for two out of the five practices and would need additional discussion and resolution on the remaining three practices.
- Compliance and Enforcement: EPA requests PADEP be more aggressive with its enforcement role in the Ag Water Quality Initiative. EPA is very pleased with the major improvements on detail and reasonable assurance for BMP implementation.

Stormwater:

PA has added additional detail on the state regulations and stormwater programs. There is not a lot of detail on how PA will ensure compliance with the state regulations. There is still a concern that PA is looking for high levels of implementation in stormwater when currently there are very low compliance rates with state or federal regulations. There is not detail at this time on how PA will increase the compliance rates. For the September 1 draft submission EPA said that this section met few expectations and at this time this review has not changed.

- PA included more language on regulations, but does not address compliance
- Need more commitment even with limited resources, include a discussion on how to improve compliance over time
- No follow up on maintenance for post construction BMPs
- Weak language to align with PAG-13 general stormwater permit with meeting the Bay TMDL allocations and goals
- PA is projecting a high percentage of compliance with Erosion & Sediment controls, but results from inspections do not support the high percentages
- PA is projecting a 38% reduction in urban runoff loads compared to 2009, but stormwater programs as described in the WIP do not support these increased implementation rates and load reductions

Wastewater:

PA has added more detail and included more information to address some of the concerns with the initial draft submission of September 1, 2010. EPA is confident that PA can address the remaining concerns with the wastewater section. Please make sure that there is consistency with Table B2 and the input deck and ensure that all facilities are included in both tables, even if you are not asking for reductions from those sources. (i.e. PAG-04). EPA stated that the wastewater section met few expectations from the September 1 draft and at this time this section meets most expectations. EPA would like to also see increased justification or explanation on the reductions expected from septs (include a schedule).

- Ensure that all of the PAG-04 facilities are included in the B2 table
- Plan does not clearly justify 21% reduction in septic loads compared to 2009

Growth/Offsets/Trading:

PA and EPA have worked together to address the issues concerning growth which includes offsets and trading. DEP has worked to address EPA's comments. EPA identified in an 11/18/2010 email the revisions that DEP must make to this section in order to meet EPA's expectations. EPA asked PA to clearly articulate its policies on new and expanded discharges and under what authority how offsets are secured and enforced. EPA expects to be satisfied with this section pending the addition of the revisions discussed via e-mail on 11/18/20.

- Need to provide detail on implementing offset program for new growth; only discusses trading right now. Needs to distinguish between trading and offsets
- Plan does acknowledge program will be reviewed in 2011
- Includes detailed description on arrangement with PennVest

Consistency Among Table B2, WIP Input Deck and WIP Narrative

EPA is pleased to learn that Table B2 in the final WIP will be based on PA's final WIP input deck. EPA agrees that if input deck results are not available by 11/29, PA may include a placeholder for these results in its final WIP.

Summary of Recent Input Deck Results

November 12 WIP submission is 6% over N, 16% over P, and is within the range for sediment allocations. DEP has had follow-up conversations with EPA and Chesapeake Bay Program staff on November 17 and 18 to discuss options for closing these numeric gaps without undermining the demonstration of reasonable assurance. Getting to the target allocations is a first order of business and we will do our best to process revised input decks as soon as doable during the week of November 22.

Backstop Allocations:

Yes – if the final input deck does not meet PA’s allocations and/or for stormwater, septic systems and possibly agriculture if the reasonable assurance gaps are not addressed.

Stormwater and CAFO backstop allocations would expand the urban and animal operation areas potentially subject to NPDES permit conditions. If EPA does not have reasonable assurance that load allocations can be achieved and maintained, EPA may also apply backstop allocations to wastewater treatment plants. EPA will consider an option of backstop allocations for WWTPs to ENR rather than E3 treatment levels if reasonable assurance gaps are partially addressed.